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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,237	07/09/2001	Paul D. Daly	60426-282; 2000P07905US01	7497

24500 7590 01/11/2006

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EXAMINER	
CHAU, COREY P	

ART UNIT	PAPER NUMBER
2644	

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/901,237	DALY, PAUL D.	
	Examiner	Art Unit	
	Corey P. Chau	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-18 and 20-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-18 and 20-24* is/are rejected.

7)☐ Claim(s) *19* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 23 and 24 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification as originally filed, does not support the limitations of "a comparison of said engine speed data with an amount of time said engine speed data **exceeds a threshold value of speed and load**" as claimed in claim 23 now. The specification as originally filed, does not support the limitations of "a comparison of said engine speed data and said engine load data with an amount of time said engine speed data and said engine load **exceed a threshold value of speed and load**" as claimed in claim 24 now. The specification discloses "memory unit 38 and control unit 26 could track the particular speed or load of engine 22, weigh these values based on the amount of time the engine 22 has **maintained** the particular speed or load", which is not equivalent to "a comparison of said engine speed data with an amount of time said engine speed data **exceeds a threshold value of speed and load**" or "a comparison of said engine speed data and

said engine load data with an amount of time said engine speed data and said engine load **exceed a threshold value of speed and load**".

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 21 recites "The air induction body of claim 21", which renders the claim indefinite because it is unclear to the Examiner the dependency of Claim 21. Claim 22 depends on Claim 21 and is rejected in view of Claim 21.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5748748 to Fischer et al (hereafter as Fischer).

7. Regarding Claims 1 and 23 (as best understood with regards to the 112, 1st problem mentioned above), Fischer discloses an air induction system comprising (Figs. 1, 3, and 5): an air induction body (16); a speaker (44); a control unit in communication with said speaker (Figs. 1, 3, and 5), having at least two modes of noise attenuation signal generation (column 3, lines 43-63); an engine sensor (Fig. 1; column 7, line 58 to

column 8, line 5) for communicating engine data to said control unit (Fig. 1); and said control unit for selecting one of said at least two modes of noise attenuation signal generation based on said engine data (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle)(column 3, line 43 to column 4, line 28).

8. Regarding Claim 2., Fischer discloses engine data comprises engine load data and engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

9. Regarding Claim 3, Fischer discloses a memory unit storing driving mode information that at least assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation (Figs. 1, 3, and 5).

10. Regarding Claim 4, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine speed data (Figs. 1, 3, and 5).

11. Regarding Claim 5, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data (Figs. 1, 3, and 5).

12. Regarding Claim 6, Fischer disclose said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data (Figs. 1, 3, and 5).

13. Regarding Claim 7, Fischer discloses one of said at least two driving modes comprises a sport-driving mode and one of said at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

14. Regarding Claims 8 and 24 (as best understood with regards to the 112, 1st problem mentioned above), Fischer discloses an air induction system (Figs. 1, 3, and 5) comprising: an air induction body (16); a speaker (44) disposed adjacent said air induction body (Figs. 1, 3, and 5); a control unit in communication with said speaker (Figs. 1, 3, and 5), having at least two modes of noise attenuation signal generation (column 3, line 43 to column 4, line 28; column 9, lines 29-42); a memory unit storing driving mode information (38) that assists said control unit in the selection of one of said at least two modes of noise attenuation signal generation; an engine speed sensor (20) for communicating engine speed data to said control unit; and an engine load sensor (22) for communicating engine load data to said control unit wherein said control unit selects one of said at least two modes of noise attenuation signal generation based on a comparison of said engine speed data and said engine load data and data stored in said memory unit (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle)(column 3, line 43 to column 4, line 28).

15. Regarding Claim 9, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

16. Regarding Claim 10, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

17. Regarding Claim 11, Fischer discloses said driving mode information comprises data relating at least one mode of noise attenuation to said engine load data and said engine speed data (Fig. 1; column 4, lines 29-47; column 7, line 58 to column 8, line 5).

18. Regarding Claim 12, Fischer discloses one of said at least two driving modes comprises a sport-driving mode and one of said at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

19. Regarding Claim 13, Fischer discloses a method of noise attenuation comprising: determining engine speed data (20); determining engine load data (22) ; selecting one of at least two modes of noise attenuation signal generation based on the determined engine speed data and engine load data; and generating a noise attenuation signal from the selected mode (the influence can also consist of changing an undesirable oscillation into a desirable oscillation as a function of the operating condition of the vehicle)(column 3, line 43 to column 4, line 28; column 9, lines 29-42).

20. Regarding Claim 14, Fischer discloses one of the at least two driving modes comprises a sport-driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

21. Regarding Claim 15, Fischer discloses one of the at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

22. Regarding Claim 16, Fischer discloses one of the at least two driving modes comprises a sport-driving mode and one of the at least two driving modes comprises a normal driving mode (column 3, line 43 to column 4, line 28; column 9, lines 29-42).

23. Regarding Claim 17, Fischer discloses the selecting one of at least two modes of noise attenuation signal generation comprises comparing the determined engine speed data and engine load data with engine speed data and engine load data related to each of the at least two modes of noise attenuation signal generation (Figs. 1, 3, and 5; column 3, line 43 to column 4, line 28; column 9, lines 29-42).

24. Regarding Claim 18, Fischer discloses said at least two modes of noise attenuation signal generation comprises a first driving mode and a second driving mode, said first driving mode providing a lower level of noise attenuation than said second driving mode (column 3, lines 43-63).

25. Regarding Claim 20, Fisher discloses said first driving mode is a sport-driving mode and said second driving mode is a normal driving mode (column 3, lines 43-63).

26. Claim 21 is essentially similar to Claim 18 and is rejected for the reasons stated above apropos to Claim 18.

Allowable Subject Matter

27. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

28. Applicant's arguments filed 9/08/2005 have been fully considered but they are not persuasive.

29. With respect to Applicant's argument on page 9, stating that "there is no anticipation because Fischer fails to disclose selecting one of at least two modes of noise attenuation signal generation based on engine data", has bee noted. However, the Examiner respectfully disagrees. Fischer discloses changing an undesirable oscillation (i.e. one mode of noise attenuation) into a desirable oscillation (i.e. another mode of noise attenuation) as a function of the operating condition of the vehicle, which reads on "selecting one of said at least two modes of noise attenuation signal generation based on said engine data".

30. With respect to Applicant's argument on page 9, stating that "the reference passage discloses only changing an undesirable oscillation into a desirable oscillation as a function of an operating condition of the vehicle. There is only one mode of noise attenuation disclosed for the system, i.e., the sports car mode", has been noted. However, the Examiner respectfully disagrees. Fischer discloses **changing** an undesirable oscillation into a desirable oscillation **as a function of an operating condition of the vehicle**, which is interpret as changing from one mode of noise attenuation (i.e. undesirable oscillation) to another mode of noise attenuation (i.e. desirable oscillation) based on (i.e. as a function of) an operating condition of the vehicle, which reads on "selecting one of said at least two modes of noise attenuation signal generation based on said engine data".

31. With respect to Applicant's argument on page 10, stating that "there is no disclosure in the cited portions of Fischer showing a selection of one of at least two mode of noise attenuation signal generation based on a comparison of engine speed data and engine load data with data stored in a memory unit", has been noted. However, the Examiner respectfully disagrees. See argument above.

32. With respect to Applicant's argument on page 10, stating that "claim 8 also requires that the speaker be disposed adjacent to the air induction body. This element is not disclosed by Fischer", has been noted. However the Examiner respectfully disagrees. Fischer discloses if there is already an audio system in the vehicle 14, such as a stereo system with a radio receiver and a cassette or CD player, the apparatus claimed by the present invention can make use of the output stage or the output stages and the loudspeaker or the loudspeakers of this audio system, as a result of which the costs for the apparatus claimed by the present invention can be reduced accordingly (column 9, lines 13-20). Some examples of speaker systems (e.g., loudspeaker systems) which may be utilized in conjunction with the present invention are to be found in U.S. Pat. No. 4,914,707; No. 5,129,004; No. 5,263,188; No. 5,297,212; No. 5,420,931; and No. 5,469,509, each of these issued U.S. patents being hereby expressly incorporated by reference herein (column 12, lines 52-57). Therefore Fischer reads on "a speaker disposed adjacent said air induction body".

33. With respect to Applicant's argument on page 11, stating that "Fischer does not disclose separate and distinct modes of operation of noise attenuation signal

generation", has been noted. However, the Examiner respectfully disagrees. See argument above.

34. With respect to Applicant's argument on page 11, stating that "these features are also not shown by Fischer", has been note. However, the Examiner respectfully disagrees. See argument above.

Conclusion

35. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

36. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey P. Chau whose telephone number is (571)272-7514. The examiner can normally be reached on Monday - Friday 9:00 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on (571)272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 9, 2006
CPC

HUYEN LE
PRIMARY EXAMINER